IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9429 of 2007

Date of Decision: 13.12.2007

Smt.Sita Devi

..Petitioner.

Vs.

Bank of Baroda and another

..Respondents.

CORAM : HON'BLE MR.JUSTICE M.M.KUMAR

HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

* * *

Present: Mr.Pankaj Gupta, Advocate for the petitioners.

Mr.C.S.Pasricha, Advocate for the respondents.

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M.M.KUMAR, J.

The prayer made by the petitioner in the petition filed under Article 226 of the Constitution is for quashing notice dated 2.5.2007 (Annexure P/1). The aforementioned communication demanding possession has been issued after issuance of notice under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity as `the Act') on 27.6.2006. After notice Under Section 13(4) of the Act is issued, an appeal under Section 17 of the Act against such a notice would lie to the Debt Recovery Tribunal (for brevity the `DRT').

Mr.C.S.Pasricha, learned counsel for the respondents states that notice dated 2.5.2007 (Annexure P/1) for all intents and purposes is a notice under Section 13(4) of the Act although it does not expressly state so. He further states that the petitioner may be relegated to the remedy of filing an appeal.

Mr.Pankaj Gupta, learned counsel for the petitioner states that he may be permitted to withdraw the writ petition to enable the petitioner to file an appeal under Section 17 of the Act before DRT. He further states that an appropriate application for condonation of delay on account of pendency of this petition, would also be filed before DRT along with the appeal. He has also prayed for continuation of interim order till the availing of remedy of appeal.

In view of the above, we accept the prayer made by the petitioner and relegate her to the remedy of filing an appeal under Section 17 of the Act along with an application for condonation of delay within a week. If any application seeking condonation of delay is filed then it shall be considered in the light of the fact that the instant petition has remained pending before this Court. The stay order granted by this Court staying physical possession of the mortgaged property, shall remain in operation till 20.12.2007. However, we make it clear that extension of stay order by this Court would not mean that the Tribunal is bound to grant stay. The Tribunal shall decide the application for interim order independently without being influenced by any of the observation made by this Court.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

13.12.2007
Meenu